

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

**GARY VICTOR MANTESE**  
**3895 Holly Hills**  
**St. Louis, MO 63116**

**Pharmacist License No. RPH 47841**

Respondent.

Case No. 4141

OAH No. 2011100183

**DECISION AND ORDER**

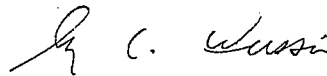
The attached Default Decision and Order is hereby adopted by the Board of  
Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 18, 2012.

It is so ORDERED on April 18, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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STANLEY C. WEISSER  
Board President

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6 **BEFORE THE**  
7 **BOARD OF PHARMACY**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
11 Revoke Probation Against:

12 **GARY VICTOR MANTESE**  
13 **3895 Holly Hills**  
14 **St. Louis, Missouri 63116**

15 **Pharmacist License No. RPH 47841**

16 Respondent.

Case No. 4141

OAH No. 2011100183

**DEFAULT DECISION AND ORDER**

[Gov. Code, § 11520]

17 **FINDINGS OF FACT**

18 1. On or about September 1, 2011, Virginia Herold (Complainant), in her official  
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
20 filed Accusation No. 4141 against Gary Victor Mantese (Respondent) before the Board of  
21 Pharmacy. On or about January 18, 2012, Complainant filed a superseding First Amended  
22 Accusation and Petition to Revoke Probation against Respondent. (A copy of the First Amended  
23 Accusation and Petition to Revoke Probation is attached as exhibit A.)

24 2. On or about May 5, 1995, the Board of Pharmacy (Board) issued Pharmacist License  
25 No. RPH 47841 to Respondent. The Pharmacist License was in full force and effect at all times  
26 relevant to the charges brought in First Amended Accusation and Petition to Revoke Probation  
27 No. 4141 and will expire on August 31, 2012, unless renewed.

28 3. On or about September 9, 2011, Accusation No. 4141, along with the accompanying  
statutory documents, was served to Respondent's address of record, which was and is 3895 Holly  
Hills, St. Louis, Missouri 63116. Respondent acknowledged receipt of same.

1           4.     Service of the Accusation was effective as a matter of law under the provisions of  
2 Government Code section 11505, subdivision (c), and Business & Professions Code section 124.

3           5.     On or about September 20, 2011, Respondent completed, signed and returned a  
4 Notice of Defense, requesting a hearing in this matter. A hearing date was set for February 13,  
5 2012. A Notice of Hearing was served by Certified and First Class Mail at Respondent's address  
6 listed above informing him of this date. Prior to that hearing date, Respondent requested a brief  
7 continuance of the matter. A new hearing date was set for March 8, 2012. Again, a Notice of  
8 Continued Hearing was served to Respondent by Certified and First Class Mail.

9           6.     On or about March 7, 2012, an attorney representing Respondent (Richard Sommer)  
10 communicated by letter that neither he nor Respondent would attend the March 8, 2012. In this  
11 letter, Respondent's attorney acknowledged appropriate notice of the hearing, and requested that  
12 the matter not be further delayed. Along with the letter, Respondent returned an Answer to the  
13 First Amended Accusation and Petition to Revoke that admitted many of its allegations.

14           7.     Neither Respondent nor his attorney attended the March 8, 2012 hearing. The record  
15 was opened to mark and receive into evidence the jurisdictional documents (State's Exhibit 1),  
16 and the letter and attached pleadings filed by Respondent (State's Exhibit 2). Exhibit 1 consists  
17 of First Amended Accusation and Petition to Revoke Probation No. 4141; the service documents  
18 showing its service on January 18, 2012; the original Accusation No. 4141; the Notice of Defense  
19 returned by Respondent in response to the original Accusation; and the Notice of Continued  
20 Hearing served on Respondent and his attorney on February 13, 2012. State's Exhibit 2 consists  
21 of a letter by Richard Sommer dated March 7, 2012; the Answer; Certificates of Service; a Notice  
22 of Appearance as Defense Counsel and Application for Leave to Appear *Pro Hac Vice*; and the  
23 authorization by Respondent for Mr. Sommer to act as his attorney in this matter. The record was  
24 then closed and the case returned to the Attorney General's Office to prepare an in-office default.

25           8.     California Government Code section 11520 states, in pertinent part:

26                 (a) If the respondent either fails to file a notice of defense or to appear at the  
27 hearing, the agency may take action based upon the respondent's express admissions  
28 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in First Amended Accusation and Petition to Revoke Probation No. 4141, finds that the charges and allegations in First Amended Accusation and Petition to Revoke Probation No. 4141 are, separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement of the Accusation matter are \$2,037.50 as of March 6, 2012.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Gary Victor Mantese has subjected his Pharmacist License No. RPH 47841 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the First Amended Accusation and Petition to Revoke Probation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. In violation of Business and Professions Code section 4301(f), Respondent did acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, including the following. In or about June 2011, Respondent, already facing a stipulated disciplinary order of license revocation, stayed, three (3) years probation with specified terms and conditions, based on an Accusation served in or about April 2011 that arose from Respondent's history of license discipline in other states due to incidents involving, *inter alia*, his use and abuse of **crack cocaine**, submitted a hair sample for drug testing, which resulted in a confirmed positive for **cocaine** metabolites. At first, Respondent adamantly denied any drug use, only to subsequently admit that he had relapsed on **cocaine**. Respondent departed California to take up residence in the State of Missouri.

1           b.     In violation of Business and Professions Code section(s) 4301(h), (j), and/or (o),  
2 and/or Health and Safety Code section 11170, Respondent, as described above, administered a  
3 controlled substance to himself.

4           c.     In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4059,  
5 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to  
6 himself or another without a valid prescription, and/or conspired to furnish, or assisted or abetted  
7 furnishing of, a controlled substance, without a valid prescription.

8           d.     In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4060,  
9 and/or Health and Safety Code section 11350, Respondent, as described above, possessed,  
10 conspired to possess, and/or assisted or abetted possession of, a controlled substance, without a  
11 valid prescription.

12          e.     In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or  
13 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to  
14 obtain and/or assisted or abetted obtaining of, a controlled substance by fraud, deceit, subterfuge,  
15 or concealment of a material fact.

16          f.     In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or  
17 Health and Safety Code section 11550, Respondent, as described above, used or was under the  
18 influence of, conspired to use/be under the influence of, and/or assisted or abetted use/being  
19 under the influence of, certain identified controlled substances, not administered by or under the  
20 direction of an authorized licensee.

21          g.     In violation of Business and Professions Code section 4301, Respondent, as described  
22 above, engaged in unprofessional conduct

23          h.     In violation of Term and Condition 2 of the Decision and Order imposing probation  
24 on Respondent's License pursuant to Accusation No. 3890, which requires that Respondent  
25 submit quarterly reports on a schedule as directed by the Board or its designee, Respondent failed  
26 to submit quarterly reports as directed, including on or prior to January 10, 2012.

27          i.     In violation of Term and Condition 3 of that Decision and Order, Respondent failed  
28 to appear in person for interviews with the Board or its designee, as directed.

1 j. In violation of Term and Condition 14 of that Decision and Order, Respondent failed  
2 to complete evaluation, enrollment, and participation in the Pharmacists Recovery Program (PRP)  
3 as directed within thirty (30) days, and has never re-entered the PRP since departing to Missouri.

4 k. In violation of Term and Condition 4 of that Decision and Order, Respondent failed  
5 to timely cooperate with the Board's inspection program and with the Board's monitoring and  
6 investigation of Respondent's compliance with the terms and conditions of his probation.

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8  
9 ORDER

10 IT IS SO ORDERED that Pharmacist License No. RPH 47841, heretofore issued to  
11 Respondent Gary Victor Mantese, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
13 written motion requesting that the Decision be vacated and stating the grounds relied on within  
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.  
16 This decision shall become effective on May 18, 2012.

17 It is so ORDERED on April 18, 2012.

18 BOARD OF PHARMACY  
19 DEPARTMENT OF CONSUMER AFFAIRS  
20 STATE OF CALIFORNIA

21 By 

22 STANLEY C. WEISSNER

23 Board President

24 10860470.DOC  
25 DOJ Matter IDs: SF2011202064 and SF2011400634

26 Attachment:

27 Exhibit A: First Amended Accusation and Petition to Revoke Probation No. 4141  
28

# Exhibit A

First Amended Accusation and Petition to Revoke Probation No. 4141

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
11 Revoke Probation Against:

Case No. 4141

12 **GARY VICTOR MANTESE**  
13 **3895 Holly Hills**  
**St. Louis, Missouri 63116**

**FIRST AMENDED ACCUSATION AND  
PETITION TO REVOKE PROBATION**

14 **Pharmacist License No. RPH 47841**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Accusation and Petition to Revoke  
19 Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy,  
20 Department of Consumer Affairs.

21 2. On or about May 5, 1995, the Board of Pharmacy issued Pharmacist License Number  
22 RPH 47841 to Gary Victor Mantese (Respondent). The License was in full force and effect at all  
23 times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

24 3. In a disciplinary action titled "In the Matter of the Accusation against Gary Victor  
25 Mantese," Case No. 3890, the Board of Pharmacy issued a Decision and Order, effective  
26 September 5, 2011, in which Respondent's Pharmacist License was revoked, with the revocation  
27 stayed and Respondent placed on probation for a period of three (3) years with certain terms and  
28 conditions. A copy of that decision is attached as exhibit A and is incorporated by reference.

## JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code), unless indicated.

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and will require a new application.

## STATUTORY AND REGULATORY PROVISIONS

8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, [another licensee, person, or the public], or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

1 (j) The violation of any of the statutes of this state, of any other state, or of the United  
2 States regulating controlled substances and dangerous drugs.

3 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
4 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
5 federal and state laws and regulations governing pharmacy, including regulations established by  
6 the board or by any other state or federal regulatory agency.

7 9. California Code of Regulations, title 16, section 1770, states:

8 "For the purpose of denial, suspension, or revocation of a personal or facility license  
9 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
10 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
11 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
12 licensee or registrant to perform the functions authorized by her license or registration in a  
13 manner consistent with the public health, safety, or welfare."

14 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
15 drug or dangerous device except upon the prescription of an authorized prescriber.

16 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
17 controlled substance, except that furnished upon a valid prescription/drug order.

18 12. Health and Safety Code section 11170 provides that no person shall prescribe,  
19 administer, or furnish a controlled substance for himself or herself.

20 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
21 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
22 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

23 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any  
24 person to use or be under the influence of any controlled substance in Schedule II (Health and  
25 Safety Code section 11055), subdivision (c), or any narcotic drug in Schedules III-V, except when  
26 administered by or under the direction of an authorized licensee.

27 ///

28 ///

1 COST RECOVERY

2 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation of the licensing  
4 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

5 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

6 16. Section 4021 of the Code states:

7 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
8 11053) of Division 10 of the Health and Safety Code.”

9 17. Section 4022 of the Code states, in pertinent part:

10 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
11 except veterinary drugs that are labeled as such, and includes the following:

12 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
13 prescription,’ ‘Rx only,’ or words of similar import. . . .

14 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
15 prescription or furnished pursuant to Section 4006.”

16 18. **Cocaine** is a Schedule I (in base/rock/crack form) or Schedule II controlled substance  
17 as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous  
18 drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

19 FACTUAL BACKGROUND

20 19. Between on or about June 29, 2009 and on or about July 1, 2011, Respondent worked  
21 as a contract pharmacist (through Intuitive Health Services in Atascadero, CA) at Coalinga State  
22 Hospital (HPE 47182) in Coalinga, CA. During that time, Respondent lived in Coalinga, CA.

23 20. On or about April 11, 2011, Respondent was served with an Accusation in the case  
24 titled “In the Matter of the Accusation Against Gary Victor Mantese,” Case No. 3890 before the  
25 Board of Pharmacy. The Accusation alleged four causes for discipline based on discipline against  
26 Respondent’s pharmacist licenses held in four (4) other states (Missouri, Louisiana, Texas, and  
27 Illinois). The underlying cases were based on, *inter alia*, Respondent’s use of **crack cocaine**.

28 ///

1           21. On or about June 8, 2011, a settlement offer was extended to Respondent regarding  
2 Case No. 3890. Respondent signed and returned the Stipulated Settlement and Disciplinary Order  
3 on or about June 13, 2011, stipulating to the allegations in the Accusation, and agreeing to terms  
4 including required enrollment in and completion of the Pharmacists Recovery Program (PRP).

5           22. In anticipation of adoption by the Board of Pharmacy of the Stipulated Settlement and  
6 Disciplinary Order, Respondent contacted the PRP and began enrollment processes. On or about  
7 June 29, 2011, Respondent submitted a hair sample for drug testing. That test came back with a  
8 confirmed positive for **cocaine** metabolites, showing Respondent's preceding use thereof. On or  
9 about July 5, 2011, that positive test result was communicated to Respondent by the PRP.

10          23. On or about July 5, 2011, in communications with PRP representatives, Respondent  
11 adamantly denied any use of **cocaine**, and challenged the result(s) of the test. Respondent  
12 informed the PRP that he would be leaving the program and the state immediately, as he was  
13 moving back to Missouri to live with family. A Texas-based attorney acting on his behalf sent a  
14 letter to PRP representatives on or about July 6, 2011 stating that Respondent was en route to  
15 Missouri, and also stating that Respondent's "employment contract was recently terminated."

16          24. On or about July 7, 2011, Respondent was terminated from the PRP and classified as  
17 a potential public risk. As of on or about that date, his PRP casefile was closed.

18          25. In the meantime, sometime before on or about July 8, 2011, Respondent contacted his  
19 supervisor(s) at Coalinga State Hospital and admitted that he had used **cocaine** earlier in the year,  
20 and that his use had been detected. He said that he was moving back to Missouri, and would no  
21 longer be accepting any shifts for employment at Coalinga State Hospital.

22          26. On or about July 21, 2011, Respondent contacted Board staff, saying that his sudden  
23 decision to move back to Missouri was made in a "panic," that he now realized he had made "a  
24 terrible mistake" and was "truly sorry," and that he wished to return to California and return to  
25 work as a pharmacist at Coalinga State Hospital.

26          27. Respondent ultimately decided to remain resident in Missouri, and has not moved  
27 back to California. This has led to non-compliance with terms and conditions of his probation.

28          ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 28. Respondent is subject to discipline under section 4301(f) of the Code, in that  
4 Respondent, as described in paragraphs 19 to 27 above, committed acts involving moral  
5 turpitude, dishonesty, fraud, deceit, or corruption.

6 SECOND CAUSE FOR DISCIPLINE

7 (Self-Administration of Controlled Substance(s))

8 29. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)  
9 and/or (o) of the Code and/or Health and Safety Code section 11170, in that Respondent, as  
10 described in paragraphs 19 to 27 above, administered controlled substance(s) to himself.

11 THIRD CAUSE FOR DISCIPLINE

12 (Furnishing of Controlled Substance(s))

13 30. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
14 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described  
15 in paragraphs 19 to 27 above, furnished to himself or another without a valid prescription, and/or  
16 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substance(s))

19 31. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
20 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
21 in paragraphs 19 to 27 above, possessed, conspired to possess, and/or assisted in or abetted  
22 possession of, a controlled substance, without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

25 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
26 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
27 19 to 27 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
28 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.



1        37. On or about August 12, 2011, Respondent was directed to appear at the offices of the  
2 Board on August 25, 2011 for a probation office conference/interview. On or about August 16,  
3 18, and/or 19, 2011, Respondent stated that he was living in Missouri, and would be unable to  
4 attend the scheduled conference/interview. On or about September 15, 2011, Respondent was  
5 directed to appear at the Board offices on September 29, 2011 for an office conference/interview.  
6 On or about September 23 and/or September 26, 2011, Respondent stated that he would not be  
7 attending the scheduled conference/interview. On or about September 29, 2011, Respondent was  
8 directed to appear at the Board offices on October 26, 2011 for an office conference/interview. A  
9 second written notification was sent to Respondent on or about October 14, 2011. Respondent  
10 did not attend the August 25, September 29, or October 26, 2011 conference(s)/interview(s). This  
11 failure to attend scheduled, noticed interview(s) subjects Respondent's License to revocation.

12                                    THIRD CAUSE TO REVOKE PROBATION

13                                    (Failure to Timely Enroll in Pharmacists Recovery Program (PRP))

14        38. At all times after the effective date (September 5, 2011) of the Decision and Order  
15 imposing probation on Respondent's License, Term and Condition 14 of that Order required that  
16 within thirty (30) days (i.e., by October 5, 2011) Respondent contact the Pharmacists Recovery  
17 Program (PRP) for evaluation, and immediately thereafter enroll, participate in, and complete the  
18 treatment contract and any subsequent addenda recommended by the PRP. Per paragraphs 22 to  
19 24 above, Respondent failed to complete evaluation, enrollment, and/or participation in the PRP  
20 program within thirty days after September 5, 2011, and has never re-entered the PRP since his  
21 departure to Missouri. This failure to timely submit to evaluation, to complete enrollment, and/or  
22 to participate in the PRP, subjects Respondent's License to revocation.

23                                    FOURTH CAUSE TO REVOKE PROBATION

24                                    (Failure to Cooperate with Board Staff)

25        39. At all times after the effective date (September 5, 2011) of the Decision and Order  
26 imposing probation on Respondent's License, Term and Condition 4 of that Order required that  
27 Respondent cooperate with the Board's inspection program and with the Board's monitoring and  
28 investigation of Respondent's compliance with terms and conditions of his probation.

1 40. Per paragraphs 35-38 above, Respondent failed to timely cooperate on one or more  
2 occasions. His failure(s) to cooperate as required subject Respondent's License to revocation.

3  
4 OTHER MATTERS – EXTENSION OF PROBATION

5 41. At all times after the effective date (September 5, 2011) of the Decision and Order  
6 imposing probation on Respondent's License, Term and Condition 19 of that Order required:

7 **19. Violation of Probation.**

8 If a respondent has not complied with any term or condition of probation, the board  
9 shall have continuing jurisdiction over respondent, and probation shall automatically be  
10 extended, until all terms and conditions have been satisfied or the board has taken other  
action as deemed appropriate to treat the failure to comply as a violation of probation, to  
terminate probation, and to impose the penalty that was stayed.

11 If respondent violates probation in any respect, the board, after giving respondent  
12 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary  
13 order that was stayed. Notice and opportunity to be heard are not required for those  
14 provisions stating that a violation thereof may lead to automatic termination of the stay  
15 and/or revocation of the license. If a petition to revoke probation or an accusation is filed  
against respondent during probation, the board shall have continuing jurisdiction, and the  
period of probation shall be automatically extended until the petition to revoke probation or  
accusation is heard and decided.

16 42. Pursuant to the operation of Term and Condition 19 of the probation order applicable  
17 to Respondent's License, probation is automatically extended by the filing hereof, and/or by  
18 Respondent's failure to comply with the terms and conditions of probation, until such time as this  
19 Accusation and Petition to Revoke Probation is heard and decided, or until the Board has taken  
20 other action as deemed appropriate to treat the failure to comply as a violation of probation.

21  
22  
23  
24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Revoking or suspending Pharmacist License Number RPH 47841, issued to Gary  
28 Victor Mantese (Respondent);


2. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3890 and imposing the disciplinary order that was stayed, thereby revoking Pharmacist License No. RPH 47841, issued to Gary Victor Mantese (Respondent);

3. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as is deemed necessary and proper.

DATED:

1/18/2012

  
VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

SF2011202064  
40510728.doc

**Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 3890**

BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 3890

**GARY VICTOR MANTESE**

300 Juniper Ridge #266

Coalinga, CA 93210

Pharmacist License No. RPH 47841

Respondent.

**DECISION AND ORDER**

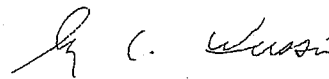
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on September 5, 2011.

It is so ORDERED on August 5, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



STANLEY C. WEISSER  
Board President

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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3890

11 **GARY VICTOR MANTESE**  
12 **300 Juniper Ridge # 266**  
13 **Coalinga, CA 93210**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

14 **Pharmacist License No. RPH 47841**

15 Respondent.

16  
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
18 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,  
19 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will  
20 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

21  
22 PARTIES

23 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought  
24 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,  
25 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General:

26 2. Respondent Gary Victor Mantese (Respondent) is representing himself in this  
27 proceeding and has chosen not to exercise his right to be represented by counsel.  
28

3. On or about May 5, 1995, the Board of Pharmacy issued Pharmacist License No. RPH 47841 to Gary Victor Mantese (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3890 and will expire on August 31, 2012, unless renewed.

## JURISDICTION

4. Accusation No. 3890 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 11, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3890 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands, the charges and allegations in Accusation No. 3890. Respondent has also carefully read, and understands, the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 3890. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to  
4 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

5  
6 CONTINGENCY

7 9. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
8 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
9 communicate directly with the Board regarding this stipulation and settlement, without notice to  
10 or participation by Respondent. By signing the stipulation, Respondent understands and agrees  
11 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the  
12 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
13 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for  
14 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
15 not be disqualified from further action by having considered this matter.

16 10. The parties understand and agree that facsimile copies of this stipulation, including  
17 facsimile signatures thereto, shall have the same force and effect as the originals.

18 11. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
19 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
20 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
21 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
22 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
23 writing executed by an authorized representative of each of the parties.

24 12. In consideration of the foregoing, the parties agree that the Board may, without  
25 further notice or formal proceeding, issue and enter the following Disciplinary Order:

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**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Pharmacist License No. RPH 47841, issued to Gary Victor Mantese (Respondent), is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

**1. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

**2. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

1           **3. Interview with the Board**

2           Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
3 with the board or its designee, at such intervals and locations as are determined by the board or its  
4 designee. Failure to appear for any scheduled interview without prior notification to board staff,  
5 or failure to appear for two (2) or more scheduled interviews with the board or its designee during  
6 the period of probation, shall be considered a violation of probation.

7           **4. Cooperate with Board Staff**

8           Respondent shall cooperate with the board's inspection program and with the board's  
9 monitoring and investigation of respondent's compliance with the terms and conditions of his  
10 probation. Failure to cooperate shall be considered a violation of probation.

11          **5. Continuing Education**

12          Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
13 pharmacist as directed by the board or its designee.

14          **6. Notice to Employers**

15          During the period of probation, respondent shall notify all present and prospective  
16 employers of the decision in case number 3890 and the terms, conditions and restrictions imposed  
17 on respondent by the decision, as follows:

18          Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
19 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
21 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
22 individual(s) has/have read the decision in case number 3890, and terms and conditions imposed  
23 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
24 submit timely acknowledgment(s) to the board. If respondent works for or is employed by or  
25 through a pharmacy employment service, respondent must notify his direct supervisor,  
26 pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions  
27 of the decision in case number 3890 in advance of the respondent commencing work at each  
28 licensed entity. A record of this notification must be provided to the board upon request.

1 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
2 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
3 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
4 report to the board in writing acknowledging that he has read the decision in case number 3890  
5 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
6 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

7 Failure to timely notify present or prospective employer(s) or to cause employer(s) to  
8 submit timely acknowledgments to the board shall be considered a violation of probation.

9 "Employment" within the meaning of this provision shall include any full-time,  
10 part-time, temporary, relief or pharmacy management service as a pharmacist or any  
11 position for which a pharmacist license is a requirement or criterion for employment,  
12 whether the respondent is an employee, independent contractor or volunteer.

#### 13 **7. Prohibitions on Supervision and Consultancy**

14 During the period of probation, respondent shall not supervise any intern pharmacist, be the  
15 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board,  
16 nor serve as a consultant unless otherwise specified in this order. Assumption of unauthorized  
17 supervision or consultant responsibilities shall be considered a violation of probation.

#### 18 **8. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, respondent shall pay to the  
20 board its costs of investigation and prosecution in the amount of \$2,365.00.

21 Absent prior written approval by the Board or its designee, respondent may not successfully  
22 complete probation until this amount is paid in full. Respondent shall be permitted to pay these  
23 costs in a payment plan approved by the Board or its designee, so long as full payment is  
24 completed no later than thirty (30) months after the effective date of this decision. There shall be  
25 no deviation from this schedule absent prior written approval by the Board or its designee.  
26 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

27 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to  
28 reimburse the board its costs of investigation and prosecution.

1           **9. Probation Monitoring Costs**

2           Respondent shall pay any costs associated with probation monitoring as determined by the  
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
5 be considered a violation of probation.

6           **10. Status of License**

7           Respondent shall, at all times while on probation, maintain an active, current license with  
8 the board, including any period during which suspension or probation is tolled. Failure to  
9 maintain an active, current license shall be considered a violation of probation.

10          If respondent's license expires or is cancelled by operation of law or otherwise at any time  
11 during the period of probation, including any extensions thereof due to tolling or otherwise, upon  
12 renewal or reapplication respondent's license shall be subject to all terms and conditions of this  
13 probation not previously satisfied.

14          **11. No Ownership of Licensed Premises**

15          Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
16 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
17 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
18 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
19 days following the effective date of this decision and shall immediately thereafter provide written  
20 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
21 documentation thereof shall be considered a violation of probation.

22          **12. Notification of a Change in Employment, Name, Address(es), or Phone(s)**

23          Respondent shall notify the board in writing within ten (10) days of any change of  
24 employment. Said notification shall include the reasons for leaving, the address of the new  
25 employer, the name of the supervisor and owner, and the work schedule if known.

26          Respondent shall further notify the board in writing within ten (10) days of a change in  
27 name, residence address, mailing address, or phone number.

28          ///

1 Failure to timely notify the board of any change in employer(s), name(s), address(es), or  
2 phone number(s) shall be considered a violation of probation.

3 **13. Supervised Practice**

4 During the period of probation, Respondent shall practice only under the supervision of a  
5 licensed pharmacist not on probation with the board. Upon and after the effective date of this  
6 decision, Respondent shall not practice pharmacy and his license shall be automatically  
7 suspended until a supervisor is approved by the board or its designee. The supervision shall be,  
8 as required by the board or its designee, either:

9 Continuous – At least 75% of a work week

10 Substantial - At least 50% of a work week

11 Partial - At least 25% of a work week

12 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

13 Within thirty (30) days of the effective date of this decision, Respondent shall have his  
14 supervisor submit notification to the board in writing stating that the supervisor has read the  
15 decision in case number 3890 and is familiar with the required level of supervision as determined  
16 by the board or its designee. It shall be the Respondent's responsibility to ensure that his  
17 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
18 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
19 acknowledgements to the board shall be considered a violation of probation.

20 If Respondent changes employment, it shall be the Respondent's responsibility to ensure  
21 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely  
22 acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15)  
23 days after employment commences, submit notification to the board in writing stating the direct  
24 supervisor and pharmacist-in-charge have read the decision in case number 3890 and is/are  
25 familiar with the level of supervision as determined by the board. Respondent shall not practice  
26 pharmacy and his license shall be automatically suspended until the board or its designee  
27 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to  
28 submit timely acknowledgements to the board shall be considered a violation of probation.

1 Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

2 During any such suspension, respondent shall not enter any pharmacy area or any portion of  
3 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
4 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or  
5 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
6 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
7 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
8 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
9 and controlled substances. Respondent shall not resume practice until notified by the board.

10 During any such suspension, respondent shall not engage in any activity that requires the  
11 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
12 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
13 designated representative for any entity licensed by the board.

14 Failure to comply with any such suspension shall be considered a violation of probation.

15 **14. Pharmacists Recovery Program (PRP)**

16 Within thirty (30) days of the effective date of this decision, respondent shall contact the  
17 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,  
18 successfully participate in, and complete the treatment contract and any subsequent addendums as  
19 recommended and provided by the PRP and as approved by the board or its designee. The costs  
20 for PRP participation shall be borne by the respondent. If respondent is currently enrolled in the  
21 PRP, said participation is now mandatory and as of the effective date of this decision is no longer  
22 considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent  
23 shall participate in and complete his contract and any subsequent addendums with the PRP.

24 Failure to timely contact or enroll in the PRP, or successfully participate in and complete  
25 the treatment contract and/or any addendums, shall be considered a violation of probation.

26 Probation shall be automatically extended until respondent successfully completes the PRP.  
27 Any person terminated from the PRP program shall be automatically suspended by the board.  
28 Respondent may not resume the practice of pharmacy until notified by the board in writing.

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
2 licensed practitioner as part of a documented medical treatment shall result in the automatic  
3 suspension of practice by respondent and shall be considered a violation of probation.

4 Respondent may not resume the practice of pharmacy until notified by the board in writing.

5 During any such suspension, respondent shall not enter any pharmacy area or any portion of  
6 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
7 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or  
8 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
9 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
10 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
11 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
12 and controlled substances. Respondent shall not resume practice until notified by the board.

13 During any such suspension, respondent shall not engage in any activity that requires the  
14 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
15 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
16 designated representative for any entity licensed by the board.

17 Failure to comply with any such suspension shall be considered a violation of probation.

18 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not  
19 timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid  
20 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

21 **15. Abstain from Drug and Alcohol Possession or Use**

22 Respondent shall fully abstain from possession or use of alcohol, controlled substances,  
23 dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed  
24 by a licensed practitioner as part of a documented medical treatment. Upon request of the board  
25 or its designee, respondent shall provide documentation from the licensed practitioner that a drug  
26 was legitimately prescribed and is a necessary part of respondent's treatment. Failure to timely  
27 provide such documentation shall be considered a violation of probation.

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Respondent shall ensure he is not in the same physical location as individuals who are using illicit substances even if Respondent is not personally ingesting a drug. Any possession or use of alcohol, controlled substances, or paraphernalia not supported by timely documentation, and/or any proximity to persons using illicit substances, shall be considered a violation of probation.

#### 16. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program for the detection of alcohol, narcotics, hypnotics, dangerous drugs or controlled substances as the board or its designee may direct. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the board or its designee. At all times, Respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples.

Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in automatic suspension of practice by Respondent. Respondent may not resume practice until notified by the board in writing.

During any such suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

1 During any such suspension, respondent shall not engage in any activity that requires the  
2 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
3 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
4 designated representative for any entity licensed by the board.

5 Failure to comply with any such suspension shall be considered a violation of probation.

6 **17. Tolling of Probation**

7 Except during periods of suspension, respondent shall, at all times while on probation, be  
8 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.  
9 Any month during which this minimum is not met shall toll the period of probation, i.e., the  
10 period of probation shall be extended by one month for each month during which this minimum is  
11 not met. During any such period of tolling of probation, respondent must nonetheless comply  
12 with all terms and conditions of probation.

13 Should respondent, regardless of residency, for any reason (including vacation) cease  
14 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,  
15 respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
16 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
17 failure to provide such notification(s) shall be considered a violation of probation.

18 It is a violation of probation for respondent's probation to remain tolled pursuant to the  
19 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
20 exceeding thirty-six (36) months.

21 "Cessation of practice" means any calendar month during which Respondent is  
22 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and  
23 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
24 month during which Respondent is practicing for at least forty (40) hours as a  
25 pharmacist as defined by Business and Professions Code section 4000 et seq.

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1           18.   **License Surrender While on Probation/Suspension**

2           Following the effective date of this decision, should respondent cease practice due to  
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
4 respondent may tender his license to the board for surrender. The board or its designee shall have  
5 the discretion whether to grant the request for surrender or take any other action it deems  
6 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent  
7 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
8 record of discipline and shall become a part of the respondent's license history with the board.

9           Upon acceptance of surrender, respondent shall relinquish his pocket and wall license to the  
10 board within ten (10) days of notification by the board that the surrender is accepted. Respondent  
11 may not reapply for any license from the board for three (3) years from the effective date of the  
12 surrender. Respondent shall meet all requirements applicable to the license sought as of the date  
13 the application for that license is submitted to the board, including any outstanding costs.

14           19.   **Violation of Probation**

15           If a respondent has not complied with any term or condition of probation, the board shall  
16 have continuing jurisdiction over respondent, and probation shall automatically be extended, until  
17 all terms and conditions have been satisfied or the board has taken other action as deemed  
18 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
19 to impose the penalty that was stayed.

20           If respondent violates probation in any respect, the board, after giving respondent notice  
21 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
22 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
23 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
24 a petition to revoke probation or an accusation is filed against respondent during probation, the  
25 board shall have continuing jurisdiction and the period of probation shall be automatically  
26 extended until the petition to revoke probation or accusation is heard and decided.

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20. **Completion of Probation**

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

ACCEPTANCE

I have carefully read the foregoing Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 6/13/11

  
GARY VICTOR MANTESE  
Respondent

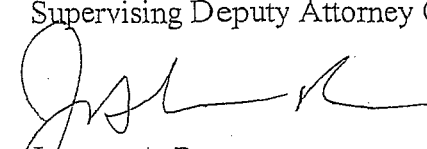
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 6/23/2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
JOSHUA A. ROOM  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 3890**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
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6 Facsimile: (415) 703-5480  
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**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3890

11 **GARY VICTOR MANTESE**  
12 **300 Juniper Ridge # 266**  
13 **Coalinga, CA 93210**

**A C C U S A T I O N**

14 **Pharmacist License No. RPH 47841**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
20 2. On or about May 5, 1995, the Board of Pharmacy issued Pharmacist License Number  
21 RPH 47841 to Gary Victor Mantese (Respondent). The License was in full force and effect at all  
22 times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

23  
24 JURISDICTION

- 25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
26 Consumer Affairs, under the authority of the following laws. All section references are to the  
27 Business and Professions Code (Code) unless otherwise indicated.  
28

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and will require a new application.

## STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but not be limited to, any of the following:

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

## COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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1 FIRST CAUSE FOR DISCIPLINE

2 (License Discipline by Another State)

3 9. Respondent is subject to disciplinary action under section 4301(n) of the Code, in that  
4 Respondent's license to practice pharmacy was subjected to discipline by another state, namely,  
5 Missouri. Respondent's disciplinary history in that state is as follows:

6 a. The stipulated facts underlying a disciplinary order against a license to practice  
7 pharmacy (# 29599) issued to Respondent by the Missouri Board of Pharmacy included that:

8 on or about June 26, 2003, Respondent was arrested by St. Louis Police in a  
9 known **crack cocaine** house while in possession of drug paraphernalia (a **crack pipe**);

10 on or about October 17, 2003, a urine sample provided by Respondent tested  
11 positive for **cocaine** metabolites;

12 on or about August 27, 2002, Respondent was convicted of driving under the  
13 influence of alcohol in California.

14 b. On or about April 1, 2005, and effective on or about May 17, 2005, Respondent  
15 signed and agreed to a stipulated settlement agreement with the Missouri Board of Pharmacy that  
16 imposed discipline on his license to practice pharmacy. The terms of the discipline included the  
17 suspension of Respondent's license to practice pharmacy for three (3) years, followed by a term  
18 of probation of five (5) years, both on specified terms and conditions including drug testing.

19  
20 SECOND CAUSE FOR DISCIPLINE

21 (License Discipline by Another State)

22 10. Respondent is subject to disciplinary action under section 4301(n) of the Code, in that  
23 Respondent's license to practice pharmacy was subjected to discipline by another state, namely,  
24 Louisiana. Respondent's disciplinary history in that state is as follows:

25 a. On or about February 17, 2005, the Louisiana Board of Pharmacy accepted the  
26 voluntary surrender of Respondent's license to practice pharmacy (# 11065) submitted December  
27 13, 2004, and thereby ordered indefinite suspension of the license effective December 13, 2004.

28 ///

b. On or about November 13, 2008, Respondent's request for reinstatement was granted by Consent Order and/or Consent Agreement of the Louisiana Board of Pharmacy, and his license to practice pharmacy (# 11065) was reinstated, subject to an Order suspending the license for a period of five (5) years, with that suspension order suspended in favor of probation for the same period (5 years), on terms and conditions including abstinence and drug testing.

### THIRD CAUSE FOR DISCIPLINE

(License Discipline by Another State)

11. Respondent is subject to disciplinary action under section 4301(n) of the Code, in that Respondent's license to practice pharmacy was subjected to discipline by another state, namely, Texas. Respondent's disciplinary history in that state is as follows:

a. On or about May 10, 2005, an Agreed Board Order issued by the Texas State Board of Pharmacy placed Respondent's license to practice pharmacy in that state (# 23904) on a five (5) year probated suspension with conditions, based on information that Respondent had been convicted of Driving While Intoxicated, had violated the terms of his Professional Recovery Network contract, and had received treatment in November 2004 for a **crack cocaine** relapse.

b. On or about May 10, 2006, an Agreed Board Order issued by the Texas State Board of Pharmacy suspended Respondent's license with conditions, based on information that Respondent was treated in January 2006 for a **crack cocaine** relapse and was incapacitated.

c. On or about August 2, 2006, an Agreed Board Order issued by the Texas State Board of Pharmacy revoked Respondent's license, based on Respondent's admission that he had relapsed on **crack cocaine** and his request for license revocation.

d. On or about August 11, 2010, an Agreed Board Order issued by the Texas State Board of Pharmacy ordered Respondent's license to be reinstated following his completion of a licensing examination, continuing education, and supervised internship hours, further ordered the license suspended pending an evaluation demonstrating Respondent's lack of dependence and/or incapacity, and thereafter placed the license on probation for ten (10) years, terms and conditions to include participation in the Professional Recovery Network, abstinence, and drug testing.

1 FOURTH CAUSE FOR DISCIPLINE

2 (License Discipline by Another State)

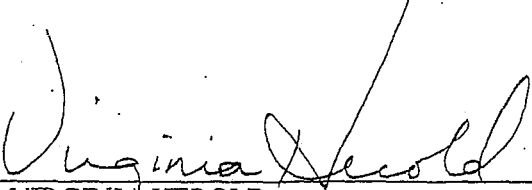
3 12. Respondent is subject to disciplinary action under section 4301(n) of the Code, in that  
4 Respondent's license to practice pharmacy was subjected to discipline by another state, namely,  
5 Illinois. Respondent's disciplinary history in that state includes that on or about May 25, 2006, a  
6 Consent Order approved by the Illinois Department of Financial and Professional Regulation,  
7 Division of Professional Regulation, with regard to Respondent's license to practice pharmacy in  
8 that state (# 51031441), suspended that license indefinitely, until such time as Respondent might  
9 petition for restoration. To petition for restoration, Respondent would have to show, *inter alia*,  
10 that his Texas and Louisiana licenses are no longer in suspended status.

11  
12  
13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Pharmacy issue a decision:

- 16 1. Revoking or suspending Pharmacist License Number RPH 47841, issued to Gary  
17 Victor Mantese (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21  
22  
23 DATED: 4/5/11

24   
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant

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